JAMES STUART HASTINGS

v.

GREEN & COLLIER BULLION PTE. LTD.

HIGH COURT, SINGAPORE
AP RAJAH J
[SUIT NO. 2990 OF 1982]
4 APRIL 1985

CONTRACT: *Contract of purchase of futures gold - Whether ambiguous - Whether for 1 lot Kilobar or 1 lot 100 oz of gold.*

The plaintiff, a retired rubber broker, had discussions with a director of the defendant company on the prospect of opening a gold trading account with the defendants. It was suggested to the plaintiff that the best contract for him would be a Kilobar contract. The plaintiff claimed that he accepted the advice, that pursuant to his intention of trading in Kilobar contracts he purchased through the defendants and deposited with them one Kilobar of gold as security for his trading account. The plaintiff's first purchase of futures gold was by telephone, confirmed later in writing. The written contract drawn up by the defendants mentioned "Singapore Gold". The plaintiff, however, claimed that he believed it to mean Kilobar.

Held:
The plaintiff should succeed in his claim. The defendants should not be allowed to set up the ambiguity occasioned by them to extricate themselves from the claim of the plaintiff.

[Judgment for plaintiff.]

For the plaintiff - Chim Hou Yan
For the defendants - Lai Siu Chiu

JUDGMENT

AP Rajah J:

The Defendants are and were at all material times gold bullion dealers and brokers having their business at 55 Market Street, Singapore.

From the evidence it would appear that the business of dealing in gold for prompt or future delivery on the Gold Exchange of Singapore Private Limited (Gold Exchange) was started sometime in 1978 and then only in units or lots of 100 ounces. Later in June 1980 the kilobar unit or lot was introduced.

The following bye-laws of the New Bye-Laws of the Gold Exchange passed on 25 April 1981 appear to me to be relevant to the instant case:

(1) **A "100 oz lot"** means in relation to a prompt contract three kilobars of gold with a minimum fineness of 999.9 parts per one thousand equivalent to 96.444 fine ounces and in relation to a futures contract 100 fine ounces (Bye-Law 1).

(2) **A "kilobar lot"** means in relation to both prompt and futures contract one kilobar of gold with a minimum fineness of 999.9 parts per one thousand equivalent to 32.148 fine ounces (Bye-Law 1).

(3) **A prompt contract** is a contract for the immediate delivery of gold and shall be concluded in a 100 lot of kilobar lot (emphasis mine) (Bye-Law 4).

(4) **A futures contract** is a contract for the delivery of gold in a particular present or future month and shall be concluded in a 100 oz lot or kilobar lot (emphasis mine) (Bye-Law 5).

(5) **Trading** shall be conducted in a 100 oz lot or kilobar lot, as the case may be, or in multiples thereof and offers shall be made and accepted accordingly (Bye-Law 7).

Sometime in July 1981 the plaintiff, a retired rubber broker of good repute, had discussions with a Mr. Derek Mitchell (Mitchell), a Director of the defendant Company who was in charge of its day to day administration, on the prospect of opening a gold trading account with the defendants. Mitchell had been a colleague of his with M/s Lewis and Peat, the brokers. In the course of their discussion Mitchell suggested to the plaintiff that the best contract for him would be a kilobar contract, the smaller contract. The plaintiff accepted his advice. This aspect of the case is borne out by Mitchell's evidence. Mitchell then gave him the following printed documents for his perusal:

(1) Customer Agreement (1AB1-2)

(2) Rules for Commodity Trading (1AB3-7)

(3) Trading Terms (1AB8-9)

The Trading Terms is annexed as Appendix 1. Rule 4 of Rules for Commodity Trading (1AB4) reads:

> The Customer shall give clear and full instructions in relation to each transaction, and such instructions shall be given to an authorised servant of the Company or its Registered Representative concerned. In giving such instructions the Customer shall clarify whether the order is to open a position or to liquidate an existing one, and such instruction shall include:-

(a) The type, delivery month and quantity, and,

(b) ... ...

In his evidence the plaintiff referred to paragraph 4 of the Statement of Claim, which was admitted by the defendants in their Defence, wherein he states that pursuant to his intention of trading in kilobar contracts he purchased on the 7 October 1981 one kilobar of gold and deposited the said stock with the defendants as security for his trading account. The gold was purchased through the defendants and the amount paid for it was US$14,530.90 (2AB4).

In his evidence the plaintiff says that Mitchell introduced him to a Mr. Michael Lam (Lam), one of the brokers employed by the defendants, to whom Mitchell explained that the plaintiff was only interested in the kilobar unit. Not all of Mitchell's evidence not that of Lam tallies with that of the plaintiff in the matter of the plaintiff - Lam meeting. Mitchell's evidence reads:

> I believe I phoned Mr. Michael Lam and told him about the plaintiff who would be contacting him. I don't think I told him that he would only trade in kilobars, I can't remember introducing the plaintiff to Lam (DW1). This would be most unlikely. I don't know what happened afterwards until I got a telephone call from the plaintiff on or about the 29 January 1982.

On this aspect of the case I found Mitchell's evidence not to be very satisfactory and I prefer that of the plaintiff. Against the background of the friendship between him and the plaintiff and of the fact that he had worked under the plaintiff at M/s Lewis & Peat, I believe that it is more likely that a more intimate and personal element would have been introduced into this business matter and an introduction to Lam was more probable than not. In his examination-in-chief Lam categorically denied having met the plaintiff as alleged and said that he was seeing the plaintiff for the first time in Court. However, in cross-examination, he

conceded that Mitchell could probably have brought him in to the trading room and that it is possible that "I was introduced to the plaintiff but I have now forgotten about it". I got the impression he was not telling the whole truth in this matter. I accept the evidence of the Plaintiff on this. I am satisfied that Lam was before the plaintiff commenced trading in gold aware that the latter was only interested in trading in kilobar lots.

The plaintiff's first purchase of futures gold was through Lam whom he telephoned on the 14 October 1981. In his evidence he says he told Lam that he wanted to buy a kilobar. The price was agreed and he instructed him to buy it at the agreed price. Subsequently it was confirmed in writing (1AB10). In his evidence on this aspect of the case Lam has this to say:

> The plaintiff called me on the telephone. He asked me the price of February 1982 gold. I gave him the price. He asked me to buy one lot. This was all he said to me. By one lot I understood 100 ounces of gold. It is the standard term of trading in gold, which is one kilo contract.
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> When a customer calls I always give the quote in 100 ounces contract unless otherwise specified. I would call this a 100 oz contract. We started in the Exchange by only dealing in 100 ounces but later the kilobar contract was introduced in June 1980. If a customer does not specify what he wants to buy I assume it to be a 100 ounces contract. The plaintiff comes under the category of the company's clients (the defendants). The particulars in 1AB10 were supplied by me to the Accounts section and a copy goes to the Gold Exchange. 1AB10 is a computer printout. This is sent out to the customer, I wrote one lot. This is a computer printout. Under 'Commodity' I wrote GES Gold (Gold Exchange of Singapore), the month, the year and the unit price. I don't know whether the other gold dealers set out in the contract the total price of the purchase. I don't know whether Singapore gold is defined in the By-Laws.

I have already found that Lam was aware that the plaintiff was only interested in trading in kilobar lots (Mr. Mitchell accepts this position). Further as the defendants were the persons responsible for the drafting of the contract for the purchase of futures gold (1AB10); it was for them to spell out the contract in accordance with the New Bye-Laws, the Rules for Commodity Trading and the Trading Terms. If this had done then under the Commodity column in 1AB10 either the words "Singapore Gold 100 oz" or "Singapore Gold Kilobar" would have appeared. Instead of which in 1AB10 only the words "Singapore Gold" appear. From the Trading Terms (1AB8-9) it is clear that the Gold Exchange trades in four different types of gold namely, Singapore gold, N.Y. Comex gold, Hong Kong gold and Loco London gold. The lots or units for trading in Singapore gold under the New Bye-Laws (1AB27) is 100 oz or kilobar as set out above. The words "Singapore gold" are not defined in the New Bye-Laws. This being so Contract 1AB10 is ambiguous and could mean either 100 oz or kilobar. The plaintiff believed it to mean kilobar as he was only dealing in kilobars and his mind was not directed to a 100 oz contract. The first time the plaintiff became aware that "Singapore gold" meant 1 lot 100 oz was when Lam telephoned him on 29 January 1982 and when he told Lam that he had on 14 October 1982 brought 1 lot kilobar and not 1 lot 100 oz. The defendants are now setting up the ambiguity occasioned by them to extricate themselves from the claim of the plaintiff.

For these reasons I give judgment for the plaintiff in the sum claimed i.e. S$11,518.15 and costs. As claimed by Counsel for the plaintiff there will be interest at the rate of 8% from date of Writ up till date of judgment.

Also found at [1985] 1 CLJ 486